

STATE OF MICHIGAN  
IN THE SUPREME COURT  
APPEAL FROM COURT OF APPEALS

IN RE PETITION BY TREASURER OF  
WAYNE COUNTY FOR FORECLOSURE

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WAYNE COUNTY TREASURER,

Petitioner,

and

MATTHEW TATARIAN and MICHAEL KELLY,

Intervening Parties - Appellants,

v.

PERFECTING CHURCH,

Respondent - Appellee

Supreme Court No. 129341

Court of Appeals No. 261074

Wayne County Circuit Court  
No 02-220192-PZ

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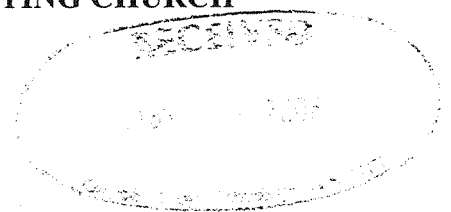
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AMICUS CURIAE BRIEF  
OF HIGH PRAISE CATHEDRAL OF FAITH MINISTRIES  
IN SUPPORT OF RESPONDENT - APPELLANT PERFECTING CHURCH

ORAL ARGUMENT NOT REQUESTED



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## **STATEMENT OF BASIS OF JURISDICTION**

This Court has jurisdiction over this matter pursuant to MCR 7.301(A)(2) because it involves an appeal from a July 11, 2005 order of the Court of Appeals denying Appellant's Application for Leave to Appeal a July 7, 2004 order of the Wayne County Circuit Court .

## **QUESTIONS PRESENTED FOR REVIEW**

- I. Whether the trial court retained jurisdiction to grant relief from the judgment of foreclosure pursuant to MCR 2.612(C), notwithstanding the provisions of MCL 211.78l(1) and (2).**

The trial court did not answer this question

The Court of Appeals did not answer this question

Intervening Parties - Appellants Answered "No"

Respondent - Appellee would answer "Yes"

Amicus Curiae High Praise answers "Yes"

- II. Whether MCL 211.78l, as interpreted by Appellants, would permit a person to be deprived of property without being afforded due process.**

The trial court did not answer this question

The Court of Appeals did not answer this question

Intervening Parties - Appellants Answered "No"

Respondent - Appellee would answer "Yes"

Amicus Curiae High Praise answers "Yes"

## **INTEREST OF AMICUS**

High Praise Cathedral of Faith Ministries (formerly known as Unity Apostolic Cathedral of the Unity Apostolic Cathedral Assembly of the World Inc. prior to October 18, 2005) (“High Praise”) is a nonprofit, tax exempt Michigan ecclesiastical corporation with its house of worship located at 8809 Schoolcraft Rd., Detroit, Michigan 48238. Like Respondent - Appellee Perfecting Church, High Praise is a tax exempt organization whose church building was lost through the tax foreclosure provisions of the General Property Tax Act, as amended by 1999 PA 123. The facts surrounding this foreclosure are discussed in the Statement of Facts.

The experience of High Praise with the tax foreclosure process differs from that of Perfecting Church in the degree of magnitude of the loss. High Praise lost its \$5.0 million church building / house of worship, as opposed to Perfecting Church’s loss of its undeveloped parking lot. The difference in scale of the value of the property lost by High Praise presents the Court with a broader perspective of the application of the tax foreclosure process.

High Praise also has an interest in the outcome of this matter, since its own tax foreclosure case is pending in the Court of Appeals (Case No. 263499) under the prior name of Unity Apostolic Cathedral, and is being held in abeyance pending the Supreme Court’s decision in the Perfecting Church case (Order of Court of Appeals of April 17, 2006).

Because of High Praise’s experience with the tax foreclosure process, and its own interest in the outcome of this matter, it is in a position to bring to this Court’s attention a broader perspective of the effect of any decision that the Court may make in this case.

## STATEMENT OF FACTS

High Praise Cathedral of Faith Ministries (formerly known as Unity Apostolic Cathedral of the Unity Apostolic Cathedral Assembly of the World Inc. prior to October 18, 2005) (“High Praise”) is a nonprofit, tax exempt Michigan ecclesiastical corporation with its house of worship located at 8809 Schoolcraft Rd., Detroit, Michigan 48238. Like Respondent - Appellee Perfecting Church, High Praise is a tax exempt organization whose property was lost through the tax foreclosure provisions of the General Property Tax Act, as amended by 1999 PA 123 (the “Act”).

High Praise’s church covers eight (8) separate lots in Detroit, fronting on Schoolcraft Road, taking up the entire block between Indiana and Kentucky Streets, and extending back along those streets. However, it is used as a single building with a single address of 8809 Schoolcraft Road. The church is one of the largest in the City of Detroit, and has an estimated value of approximately \$5,000,000.

Due to an apparent clerical error by the City of Detroit, in 2000 one of the eight lots on which High Praise’s church building is located was erroneously reclassified by the City of Detroit from tax-exempt to taxable. The City of Detroit misidentified this reclassified property as a vacant lot, with a street address of 13635 Indiana, Detroit, Michigan 48238. This address corresponds to the street address of a house formerly located on one of the eight lots underlying High Praise’s church building, prior to the demolition of that house some time before 1940. The house was demolished by the Archdiocese of Detroit for the purpose of building a Catholic Church, which it sold to High Praise in 1989.

Taxes of approximately \$700 were assessed by the City of Detroit, in keeping with the

mistaken belief that the High Praise property was a vacant lot. No notice of tax assessment was given to High Praise, presumably due to the misidentification of the street address. When the taxes were not paid, the delinquent taxes were turned over to the Wayne County Treasurer in its capacity as the Foreclosing Governmental Unit under the Act; MCL §211.78(6). The city gave the Treasurer the address of the lot formerly known as 3635 Indiana Street for the tax-delinquent Property. However the metes and bounds legal description covered the entire eight (8) lots of the High Praise church building with the street address of 8809 Schoolcraft Road.

Relying upon the erroneous information supplied by the City of Detroit, the Wayne County Treasurer sought to serve the notices required under the Act upon a “vacant lot” located at 13635 Indiana Street. Because the address did not exist, none of the notices were successfully delivered. The personal visit notification required under MCL §211.78i(3) was similarly unsuccessful. Believing that the tax-delinquent property was a vacant lot, the person making the personal visit mistook a vacant lot across the street from High Praise’s church building as being the delinquent property, and the notice was posted there.

The Wayne County Treasurer foreclosed upon the Property (all 8 lots) on March 10, 2003, and High Praise lost its \$5,000,000 church building due to failure to pay \$700 in taxes that it did not owe and should have never been assessed against it in the first place. **The government seized High Praise’s church building, with absolutely no notification or opportunity for due process afforded to the church, due to a compounding of clerical errors originally made by the City of Detroit.** High Praise did absolutely nothing wrong, not even failing to pay taxes legitimately owed, but they never had a chance to save their church building because of errors made by the City of Detroit and compounded by the Wayne County Treasurer.

In November 2003 the Wayne County Treasurer sold High Praises' church building for \$12,000 at tax sale. The purchaser at that sale sought to evict High Praise from its church. This was the first notification to High Praise that the government had taken its church building.

On March 4, 2005 the Wayne County Circuit Court exercised its discretion under MCR 2.612(C) to set aside the tax sale of High Praise's church building on the basis of its finding of fact that the Treasurer's efforts at providing notice under the Act failed to meet minimum due process requirements. The circuit court's ruling relied heavily upon *Wayne County Treasurer v. Westhaven Manor, et al*, 265 Mich App 285; 698 NW 2d 879 (2005), *cert den.* 474 Mich 862; 703 NW2d 190 (2005). The circuit court's ruling was appealed by the tax sale purchaser to the Court of Appeals (Case No. 263499) under the name of Unity Apostolic Cathedral, and is being held in abeyance pending the Supreme Court's decision in the Perfecting Church case (Order of Court of Appeals of April 17, 2006).

The parallels between High Praise's situation and that of Perfecting Church are striking. The major differences are ones of degree. Perfecting Church lost only its parking lot, whereas High Praise lost its house of worship. The monetary value of Perfecting Church's parking lot is reportedly only \$50,000, whereas the value of High Praise's church building is approximately \$5.0 million, being one of the largest churches in the City of Detroit.

Because of these differences in degree, the High Praise situation actually presents the Supreme Court with a purer example of the repercussions of whatever decision is made in this case.

## ARGUMENTS

### **I. The trial court retained jurisdiction to grant relief from the judgment of foreclosure pursuant to MCR 2.612(C), notwithstanding the provisions of MCL 211.78l(1) and (2).**

#### **A. Standard of Review**

Questions of whether a court has subject matter jurisdiction are questions of law which are reviewed *de novo*. *Travelers Ins. Co. v. Detroit Edison Co.*, 465 Mich 185, 205; 631 NW2d 733 (2001). Questions of statutory construction are reviewed *de novo*. *Parkwood Ltd. Dividend Housing Ass'n v. State Housing Dev. Auth.*, 468 Mich 763, 767; 664 NW2d 185 (2003). Questions involving interpretation of a court rule are treated like questions of statutory construction, and are reviewed *de novo*. *CAM Const v Lake Edgewood Condo Ass'n*, 465 Mich 549, 640 NW2d 256 (2002).

#### **B. Legal Analysis**

The Michigan Constitution grants power over the judicial branch exclusively to the Supreme Court:

*The judicial power of the state is vested exclusively in one court of justice which shall be divided into one supreme court, one court of appeals, one trial court of general jurisdiction known as the circuit court, one probate court, and courts of limited jurisdiction that the legislature may establish by a two-thirds vote of the members elected to and serving in each house. Const. 1963, Art. 6, Sec. 1. (Emphasis added)*

*The supreme court shall have general superintending control over all courts; power to issue, hear and determine prerogative and remedial writs; and appellant jurisdiction as provided by rules of the supreme court. Const. 1963, Art. 6, Sec. 4 (Emphasis added).*

This constitutional control exercised by the Supreme Court is done, in part, through the issuance of court rules:

*The supreme court shall by general rules establish, modify, amend and simplify the practice and procedure in all courts of this state. The distinctions between law and equity proceedings shall as far as practicable, be abolished. The office of master in chancery is prohibited. Const. 1963, Art. 6, Sec. 5 (Emphasis added).*

The Supreme Court's right to establish court rules to govern court practice and procedures is also recognized by the legislature in MCL 600.223.

At its most basic level, this case involves a conflict between whether the Circuit Court may manage its own docket and "relieve a party or the legal representative of a party from a final judgment, order, or proceeding" pursuant to MCR 2.612(C), or whether MCL 211.78l(1) has taken this constitutionally and legislatively mandated right away from the circuit court, and hence the Supreme Court.

The plain and literal language of MCR 2.612(C) grants the Circuit Court the authority to exercise its discretion and reopen cases which have been closed:

(1) On motion and on just terms, the court may relieve a party or the legal representative of a party from a final judgment, order, or proceeding on the following grounds:

(a) Mistake, inadvertence, surprise, or excusable neglect.

\* \* \* \*

(f) Any other reason justifying relief from the operation of the judgment.

(2) The motion must be made within a reasonable time, and, for the grounds stated in subrules (C)(1)(a), (b), and (c), within one year after the judgment, order, or proceeding was entered or taken. A motion under this subrule does not affect the finality of a judgment or suspend its operation. MCR 2.612(C)(1), (2)

In contrast, MCL 211.78l(1), (2), as interpreted by Intervening Parties-Appellants Matthew Tatarian and Michael Kelly ("Appellants"), takes away this right for cases involving delinquent property tax foreclosures:

(1) If a judgment for foreclosure is entered under section 78k and all existing recorded and unrecorded interests in a parcel of property are extinguished as provided in section

78k, *the owner of any extinguished recorded or unrecorded interest* in that property who claims that he or she did not receive any notice required under this act *shall not bring an action for possession of the property against any subsequent owner, but may only bring an action to recover money damages as provided in this section.*

(2) *The court of claims has original and exclusive jurisdiction in any action to recover monetary damages under this section.* (Emphasis added).

In resolving this conflict, this Court should rule that MCR 2.612(C) is controlling, and MCL 211.78l does not limit a court's jurisdiction, for the following reasons:

**A. This is a Matter of Judicial Practice and Procedure, and the Court Rule Controls**

The Supreme Court is constitutionally given exclusive authority to regulate the practice and procedures of the courts through the court rules, and this power may not be taken away by the legislature. "The function of enacting and amending judicial rules of practice and procedure has been committed exclusively to this Court (Const 1908, Art 7, § 5; Const 1963, art 6, § 5); a *function with which the legislature may not meddle or interfere* save as the Court may acquiesce and adopt for retention at judicial will." *Perin v Peuler (On Rehearing)*, 373 Mich 531, 541; 130 NW2d 4 (1964)(Emphasis added by the Court.) See also *Clemons v Detroit, Dept. of Transportation*, 120 Mich App 363, 370 - 371; 327 NW2d 480 (1982), citing 1963 Const. Art. 6, Sec. 5, MCL 600.223 and *Kirby v Larson*, 400 Mich 585, 598; 256 NW2d 400 (1977). The Supreme Court's rule making power is to be liberally construed in order to aid in the efficient administration of the judicial system. *Clemons, supra* at 371.

Any decision by the circuit court under MCR 2.612(C) to reopen one of its own cases clearly deals with a matter of judicial practice and procedure. Nothing could be more purely procedural than a court managing its own docket. As such, neither MCL 211.78l nor any other statute should be interpreted as exercising superintending control over MCR 2.612(C). That

authority is reserved to the Supreme Court alone. Const. 1963, Art. 6, Sec. 4.

If MCL 211.78~~l~~ had dealt with substantive law, it would not violate constitutional provisions by regulating some aspects of matters affecting the courts. *McDougall v Schanz*, 461 Mich. 15; 597 NW2d 148 (1999). However, the interpretation of the statute being presented by Appellants does not restrict itself to substantive law. It deals directly and solely with questions of practice and procedure by attempting to regulate how a circuit court may manage its own docket. As such, MCR 2.612 is not superceded by MCL 211.78~~l~~.

Seen in this light, the question presented by the Supreme Court in its Order of February 24, 2006, asking the parties to brief the issue of “whether the trial court retained jurisdiction to grant relief from the judgment of foreclosure pursuant to MCR 2.612(C)”, is self evident. The circuit court never lost jurisdiction over the case because it was given this jurisdiction by MCR 2.612(C), and the Supreme Court’s court rules are superior to the conflicting statutory language in MCL 211.78~~l~~.

**B. It Was Not the Legislature’s Intent to Limit the Jurisdiction of the Circuit Court**

The Court is required to interpret MCL 211.78~~l~~ in a manner intended to give effect to the legislative intent behind the statute. This principle was succinctly summarized in *Ross v. State of Michigan*, 255 Mich App 51, 55; 662 NW2d 36 (2003); app den. 469 Mich. 853, 666 NW2d 666 (2003):

The primary goal of statutory interpretation is to ascertain and give effect to the Legislature’s intent. *Danse Corp v City of Madison Heights*, 466 Mich 175, 181-182; 644 NW2d 721 (2002). The Legislature is presumed to intend the meaning it plainly expressed. *Guardian Photo, Inc. v Dep’t of Treasury*, 243 Mich App 270, 276-277; 621 NW2d 233 (2000). “In reviewing the statute’s language, every word should be given meaning, and we should avoid a construction that would render any part of the statute surplusage or nugatory.” *Wickens v Oakwood Healthcare System*, 465 Mich 53, 60; 631

NW2d 686 (2001). However, when the statute's language is clear and unambiguous, judicial construction is neither required nor permitted. *Frankenmuth Mut Ins Co v Marlette Homes, Inc.*, 456 Mich 511, 515; 573 NW2d 611 (1998). Conversely, if reasonable minds could differ regarding the meaning of a statute, judicial construction is appropriate. *Yaldo v North Pointe Ins Co.*, 457 Mich 341, 346; 578 NW2d 274 (1998). "In determining legislative intent, statutory language is given the reasonable construction that best accomplishes the purpose of the statute." *Frankenmuth Mut*, *supra* at 515.

Under this principle, it is clear that the legislature's intent in passing MCL 211.78l was not to limit the jurisdictional right of circuit courts to exercise their discretion under MCR 2.612 to reopen cases from their own docket. **This is evident for three reasons.**

**1. The Plain and Clear Language of MCL 211.78l Shows No Legislative Intent to Limit a Court's Discretion Under MCR 2.612**

The language of MCL 211.78l being considered by this Court, and which the Court must interpret in a with a "*reasonable construction that best accomplishes the purpose of the statute*", states:

(1) If a judgment for foreclosure is entered under section 78k and all existing recorded and unrecorded interests in a parcel of property are extinguished as provided in section 78k, the owner of any extinguished recorded or unrecorded interest in that property who claims that he or she did not receive any notice required under this act *shall not bring an action for possession of the property against any subsequent owner, but may only bring an action to recover money damages as provided in this section.*

(2) *The court of claims has original and exclusive jurisdiction in any action to recover monetary damages under this section.* (Emphasis added).

Taken literally, and giving effect to the plain language of the statute, all that MCL 211.78l restricts is the ability of former property owners to bring legal action against the persons who purchase the property at the annual tax sale held by any Foreclosing Governmental Unit. Nothing whatsoever is said about limiting the rights granted to the judiciary under the constitution, as exercised through the court rules promulgated by this Court. The legislature

clearly wanted to make sure that any purchasers at the tax sale would not be buying themselves a lawsuit. Considering the cost of legal fees to defend against even a frivolous lawsuit, this sort of protection is needed in order to avoid a chilling effect on sales of tax delinquent properties.

Appellants contend that subsection 2 of MCL 211.78~~l~~, limiting claims for money damages to actions in the court of claims, goes beyond merely protecting prospective tax sale purchasers from lawsuits and impliedly deprives the circuit courts of their jurisdiction under MCR 2.612. Nothing could be further from the plain language of the statute. The statute states, literally and plainly, that any claims for monetary damages shall be brought in the court of claims. This is mere common sense. Although the statute is silent about which non-tax-sale-purchasers could be sued for monetary damages, impliedly the only parties who could be sued for such damages would be either the local municipality which committed some error in the assessment of taxes (in the case of High Praise, the City of Detroit which erroneously started this whole chain of events by mistakenly assessing taxes against a church building, using a non-existent address), or the Foreclosing Governmental Unit which failed to give notice that met constitutional due process standards (in the case of High Praise, the Wayne County Treasurer). Both potential defendants are governmental entities, and the court of claims is the forum established for suits against governmental entities. MCL 600.6419.

The statute's language was merely attempting to achieve additional clarity by reiterating the existing rules: any monetary claims against a governmental entity involved in the tax process should be brought in the court of claims. Nothing whatsoever was said about depriving the circuit court of jurisdiction over its own case and docket. Appellant's argument is nothing more than a smoke screen to obscure the plain and literal language of the statute.

Appellants argue that implicit in the language of MCL 211.78/ is the legislative intent to help Foreclosing Governmental Units obtain the best price possible at tax sales by ensuring that once a property has been lost under the tax delinquency process, it is lost forever. (Appellant brief, pp. 9 - 10). Appellants are asking this Court to read between the lines of the statute, to find a legislative intent that is not clearly expressed, and to ignore the plain language of the statute. This is not the standard of review to be applied by this Court.

Moreover, Appellant's implied legislative intent is inconsistent with other sections of the Act. MCL 211.78k(7) allows persons claiming a property interest in foreclosed property to attempt to save their property through an appeal to the court of appeals. Clearly, if the legislature had intended to prevent any possible means of ever restoring a person's property to them, the legislature would not have added a vehicle to do exactly that in the form of MCL 211.78k(7).

Amicus curiae Michigan Department of Treasury argues in their amicus brief that the 2003 amendments to the Act which added subpart (g) to MCL 211.78k(5) supports their position. (Treasurer's Amicus Curiae Brief, p. 12). The legislative record to these 2003 amendments states that the amendment is "curative and [is] intended to express the original intent of the legislature concerning the application of 1999 PA 123." (See Compiler's Notes to MCL 211.78k). This new subsection (g) states:

A judgment entered under this section is a final order with respect to the property affected by the judgment and except as provided in subsection (7) [pertaining to appeals to the court of appeals] shall not be modified, stayed, or held invalid after the March 31 immediately succeeding the entry of a judgment foreclosing the property under this section, or for contested cases 21 days after the entry of a judgment foreclosing the property under this section.

However, the Treasurer's own amicus brief admits that this provision does not apply to the case before this Court, or to all potential cases which may appear before the circuit court. By its own reasoning, the Treasurer indicates that the circuit court retains jurisdiction (presumably under MCR 2.612) to reopen closed cases involving tax foreclosure, *provided* the reason for doing so is not lack of constitutional due process:

*Section 78l is narrowly crafted to address only situations involving foreclosure without due process. It does not address other situations that may deprive a circuit court of jurisdiction to foreclose forfeited taxes. Thus, for example, §78l does not divest the circuit court of jurisdiction to grant post-judgment relief if property that could not lawfully be taxed or could not lawfully be foreclosed is inadvertently foreclosed by the court's foreclosure judgment.* (Michigan Treasury Department Amicus Curiae Brief, p. 11). (Emphasis added)

Under the Treasurer's interpretation of MCL 211.78k(5) and MCL 211.78l, the circuit court has jurisdiction under MCR 2.612 to reopen some closed cases, but not others. However, if this reasoning is taken to its logical result, the fact that some foreclosed properties may be reopened makes this situation no different than if the circuit court exercised unfettered discretion under MCR 2.612. In either situation the hypothetical chilling effect upon tax sales will be the same. As such, there is no legislative purpose or intent evident that would demand loss of circuit court jurisdiction over its own docket.

It is worth noting that the Treasurer's interpretation of the Act allows the circuit court to reopen its judgment of foreclosure for situations where the foreclosure involved property improperly taxed. That is exactly the situation with Perfecting Church (and with amicus High Praise). Perfecting Church (and High Praise) is a tax exempt entity that had its property taken from them by the government through erroneous assessment of taxes. The Treasurer argues strenuously that the Act prohibits the circuit court from reopening its judgment of foreclosure,

but at the same time acknowledges that such a reopening would be appropriate under the specific facts and circumstances of this case.

**2. The Location of MCL 211.78/ in the General Property Tax Act Shows That the Legislature Did Not Intend to Limit a Court's Jurisdiction Under MCR 2.612**

The Title-Object Clause of the Michigan Constitution requires that individual laws passed by the legislature pertain to only one object, and bear titles which would alert a reasonable person to the content of the law:

No law shall embrace more than one object, which shall be expressed in its title. No bill shall be altered or amended on its passage through either house so as to change its original purpose as determined by its total content and not alone by its title. Const. 1963, Art. 4, Sec. 24.

In interpreting this section of the Constitution, this Court held that the body of an act must not contain provisions contrary to or not germane to the object stated in the title, since the title gives notice to the public that no matters except those indicated in the title will be found in the body of the law. *Arnold v Ogle Const. Co.*, 333 Mich 652, 659-660; 53 NW2d 655 (1952).

As such, it would be unconstitutional for the legislature to include provisions in the General Property Tax Act regulating the jurisdiction of circuit courts. Any such provision pertaining to jurisdiction should properly be located in the Revised Judicature Act of 1961. 1961 PA 236, MCL 600.101 et seq. This would be the location where the public would reasonably expect to look to discover any limitations on a court's jurisdictional powers.

It is a well established principle that a statute is presumed to be constitutional, and therefore is interpreted by this Court in a manner that would support its constitutionality:

Statutes are presumed constitutional. We exercise the power to declare a law unconstitutional with extreme caution, and we never exercise it where serious doubt exists with regard to the conflict. *Sears v Cottrell*, 5 Mich. 251, 259 (1858); accord,

*Taylor v Gate Pharmaceuticals*, 468 Mich. 1, 6; 658 N.W.2d 127 (2003). "Every reasonable presumption or intendment must be indulged in favor of the validity of an act, and it is only when invalidity appears so clearly as to leave no room for reasonable doubt that it violates some provision of the Constitution that a court will refuse to sustain its validity." *Cady v Detroit*, 289 Mich. 499, 505; 286 NW 805 (1939). *Phillips v. Mirac, Inc.*, 470 Mich. 415, 422 - 423; 685 N.W.2d 174 (2004).

We are to construe statutes in a constitutional manner if possible. *Gora v Ferndale*, 456 Mich. 704, 710; 576 N.W.2d 141 (1998).

See also *Thomas v Wayne County Bd of Supervisors*, 214 Mich 72; 182 NW 417 (1921).

The interpretation of MCL 211.78l presented by Appellants requires an interpretation by this Court of the General Property Tax Act that would place a law regarding circuit court jurisdiction squarely in the middle of the Tax Act, hidden and implied between the lines of a statute with a title not even hinting of any limitation on jurisdiction. This interpretation, if followed by this Court, would render the statute unconstitutional in violation of the Title-Object Clause.

As noted in *Gora, supra*, such an interpretation is to be avoided. In keeping with the principle that the statute must be interpreted in a constitutional manner if possible, this Court should find that the legislature did not intend MCL 211.78l to limit judicial jurisdiction. Instead, the statute should be interpreted to mean exactly what the plain language says. The legislature intended to limit suits against tax-sale purchasers by the former owners of the tax-delinquent properties being sold. Suits for money damages, which must necessarily be brought against governmental entities, should be brought in the court of claims.

Appellants' efforts to twist and distort MCL 211.78l into limiting circuit court jurisdiction under MCR 2.612 should be rejected.

### **3. Appellants' Interpretation of MCL 211.78/ Would Produce Results Not Intended by the Legislature**

The intent of 1999 PA 123, as expressed in its preamble, is to “strengthen and revitalize the economy of this state and its municipalities.” If Appellants’ interpretation of MCL 211.78/ is followed, simple errors on the part of a municipality (the City of Detroit in this case) will result in the Foreclosing Governmental Units (Wayne County Treasurer in this case) incurring enormous financial liabilities in situations where they have done nothing wrong.

It is impractical for a Foreclosing Governmental Unit to double check all of the steps taken by the local municipality in assessing its taxes. For this reason, the information supplied by the municipality must be accepted at face value by the Foreclosing Governmental Unit as true, and the foreclosure process handled accordingly. As a result, every time the City of Detroit makes an error in its tax assessments or collection procedures, the Wayne County Treasurer will bear the financial burden of this error.

The case of Amicus High Praise is particularly relevant for this situation. Through no fault of its own, due solely to reliance upon erroneous information from the City of Detroit, the Wayne County Treasurer could be facing a liability of up to \$5,000,000 if this matter goes to the court of claims. The Wayne County Circuit Court found that due to errors in the city’s records, High Praise failed to receive even one of the notices it was entitled to receive under the Act. Presumably the court of claims will make a similar finding of fact, since the facts are undisputed, and the Wayne County Treasurer will have to pay High Praise the multi-million dollar value of its church.

Magnify this example by several cases each year, in perpetuity into the future, and the

Wayne County Treasurer is looking at a staggering financial liability that could conceivably bring it to the brink of bankruptcy. This clearly was not the intent of the legislature. The intent was to help “strengthen and revitalize” governmental entities by helping them collect delinquent taxes, not to bankrupt them.

Appellants’ interpretation of MCL 211.78l is designed to give Appellants a financial windfall at the expense of other people. Depending upon who loses in the court of claims, Appellants’ windfall will be borne by either the Wayne County Treasurer or the former property owner. *Either way, due to an error by the county or the municipality, through no fault of their own, an innocent person will have had their property taken by the government without due process and handed to an investor. This is not the legislature’s intent.*

Just the opposite. The legislature did not intend to limit the circuit court’s jurisdiction under MCR 2.612, and thereby eliminate a simple procedural means of correcting errors made by local governmental units. The overriding intent of the Act is to help collect delinquent taxes while protecting the innocent. Retaining circuit court jurisdiction under MCR 2.612 does this, and is therefore consistent with legislative intent. Appellants’ interpretation of MCL 211.78l as removing jurisdiction under MCR 2.612 accomplishes the complete opposite of what the legislature intended.

## **II. MCL 211.78l, as Interpreted by Appellants, Would Permit a Person to be Deprived of Property Without Being Afforded Due Process.**

### **A. Standard of Review**

Questions of statutory construction are reviewed *de novo*. *Parkwood Ltd. Dividend Housing Ass’n v. State Housing Dev. Auth.*, 468 Mich 763, 767; 664 NW2d 185 (2003).

Constitutional issues are questions of law reviewed *de novo*. *People v Sierb*, 456 Mich 519, 522; 581 NW2d 219 (1998).

## **B. Legal Analysis**

The Michigan Constitution ensures that no person may be deprived of their property without due process:

**No person shall** be compelled in any criminal case to be a witness against himself, nor **be deprived of life, liberty or property, without due process of law.** The right of all individuals, firms, corporations and voluntary associations to fair and just treatment in the course of legislative and executive investigations and hearings shall not be infringed. Const. 1963, Art. 1, Sec. 17. **(Emphasis added).**

However, the literal language of MCL 211.78l specifically contemplates that a foreclosing governmental unit will occasionally deprive citizens of their property without due process:

(1) If a judgment for foreclosure is entered under section 78k and all existing recorded and unrecorded interests in a parcel of property are extinguished as provided in section 78k, *the owner of any extinguished recorded or unrecorded interest in that property who claims that he or she did not receive any notice required under this act shall not bring an action for possession of the property against any subsequent owner, but may only bring an action to recover money damages as provided in this section.* (Emphasis added)

It is uncontested by Appellants or any of the amicus briefs supporting Appellant that the plain and literal language of the statute contemplates that foreclosing governmental units will occasionally deprive people of their property without benefit of due process, pursuant to MCL 211.78l.

Appellants and their supporting amicus curiae briefs argue, however, that such takings without due process do not rise to the level of an unconstitutional taking because (1) any taking of property without due process contemplated by MCL 211.78l would involve “mere negligence”

on the part of some governmental entity involved in the taking, and not an intentional taking<sup>1</sup>, and (2) the persons losing their property have a vehicle available to compensate them after-the-fact for the property seized by the government, with the alleged result that the taking does not rise to the level of a due process claim,<sup>2</sup> and (3) the taking of property under the General Property Tax Act is analogous to takings under public condemnation of private property, which have been upheld even though property owners have no recourse other than compensation.<sup>3</sup> None of these arguments is persuasive, however, **and none excuses the fact that the statute contemplates and therefore condones the taking of private property without due process.**

1. Appellants' first argument misstates the rule in *Daniels*. Contrary to their assertions, the case does **not** stand for the proposition that "mere negligence" by a government official is an excuse for denial of due process. Instead, *Daniels*' negligence example covers a very limited set of actions where *accidental* property loss results from the actions of a government agent: "the Due Process Clause is simply not implicated by a negligent act of an official causing *unintentional* loss of or injury to life, liberty, or property." *Daniels*, *supra* at 328 (Emphasis added). The negligence exception for due process may apply to situations where a person is unexpectedly and unintentionally deprived of their property, such as through a crash of a military

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<sup>1</sup> *Daniels v Williams*, 474 US 327; 106 S.Ct. 662; 88 L Ed 2d 662 (1986). Appellants' brief, p. 10; Treasury Dept. Amicus Brief, p. 14.

<sup>2</sup> *Parratt v Taylor*, 451 US 327; 101 S Ct 1908; 68 L Ed 2d 420 (1981), overruled in part on other grds, *Daniels*, *supra*. Treasury Dept. Amicus Brief, p. 14; see also Appellants' Brief, p. 11.

<sup>3</sup> Appellants' Brief, pp. 11-12, citing Uniform Condemnation Procedures Act, 1980 PA 87; Treasury Dept. Amicus Brief, pp. 14 - 15 and , Michigan Land Bank Fast Track Authority Amicus Brief, p. 5, both citing Const. 1963, Art. 10, §2.

plane, but it does not apply to a situation such as with Perfecting Church where the government actually *intended* to deprive a person of their property.

This distinction is very clearly spelled out in the concurring opinion of Justice Blackmun:

We should begin by identifying the precise constitutional claims that petitioners have advanced. It is not enough to note that they rely on the Due Process Clause of the Fourteenth Amendment, for that Clause is the source of three different kinds of constitutional protection. First, it incorporates specific protections defined in the Bill of Rights. . . . Second, it contains a substantive component, sometimes referred to as "substantive due process," which bars certain arbitrary government actions "regardless of the fairness of the procedures used to implement them." *Ante* , at 331. n7 Third, it is a guarantee of fair procedure, sometimes referred to as "procedural due process": the State may not execute, imprison, or fine a defendant without giving him a fair trial, n8 nor may it take property without providing appropriate procedural safeguards. 427 U.S. at 337

If the claim is in the first category . . . , a plaintiff may invoke § 1983 regardless of the availability of a state remedy. [citations omitted] . . . Similarly, if the claim is in the second category (a violation of the substantive component of the Due Process Clause), a plaintiff may also invoke § 1983 regardless of the availability of a state remedy.

A claim in the third category -- a procedural due process claim -- is fundamentally different. In such a case, the deprivation may be entirely legitimate -- a State may have every right to discharge a teacher or punish a student -- but the State may nevertheless violate the Constitution by failing to provide appropriate procedural safeguards. . . . Similarly, a deprivation may be the consequence of a mistake or a negligent act, and the State may violate the Constitution by failing to provide an appropriate procedural response. In a procedural due process claim, it is not the deprivation of property or liberty that is unconstitutional; it is the deprivation of property or liberty *without due process of law* -- without adequate procedures.

In consequence, *when a predeprivation hearing is clearly not feasible*, when the regime of state tort law provides a constitutionally unobjectionable system of recovery for the deprivation of property or liberty, and when there is no other challenge to the State's procedures, a valid § 1983 claim is not stated. For, unlike cases in the other two categories -- those in which the alleged deprivation violates a substantive federal right -- if a procedural due process claim lacks a colorable objection to the validity of the State's procedures, no constitutional violation has been alleged. 427 U.S. at 338 - 340 (Emphasis added).

*Daniels* does not state that governmental negligence unequivocally excuses failure to follow

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constitutional due process requirements. It does so only when (1) a predeprivation hearing is not possible, (2) some other “constitutionally unobjectionable system” is in place to compensate the person for their loss, and (3) when there is no other challenge to the State’s procedures.

In the case of Perfecting Church (and amicus curiae High Praise), not only was a predeprivation, due process hearing possible, the governmental negligence occurred in connection with the overall due process procedure itself. *In effect, Appellants seek to excuse failure to provide due process on the grounds that they **negligently** failed to provide due process.* Not only is this circular logic which makes a mockery of the entire constitutional requirement of due process, it is contrary to the *Daniels* case that Appellants cite as authority for this position. The Perfecting Church situation involves a constitutional right of the “second category” referenced by Justice Blackmun - one involving “a substantive component of the due process clause” - the government is intentionally seeking to deprive a citizen of its property. As such, its due process protections are absolute, and not subject to compromise due to governmental negligence.

Even if this situation involved the “third category” referenced by Justice Blackmun, the taking of Perfecting Church’s property without due process would not be excused because the failure to provide the due process procedural protections required under the constitution were not “clearly not feasible.” Just the opposite. It was very feasible to provide the procedural hearings and procedural protections. Many other people who lost their property were afforded these protections. This is not a situation such as an unforeseen accident in which some government employee unintentionally destroys a person’s property. The “negligence” that Appellant hides behind involves the very failure to provide due process. If Appellant’s argument is accepted, any

failure whatsoever to provide due process can be attributed to mere “negligence” and thereby excused. It will make a sham of the entire constitutional due process requirement.

2. Appellants’ second argument, that the government may take private property without a predeprivation hearing as long as a postdeprivation compensation mechanism is in place, has already been considered and rejected by the Supreme Court in *Mudge v Macomb County*, 458 Mich 87, 98 - 99; 580 NW2d 845 (1998), which states in relevant part:

Defendants argue that plaintiffs may not assert a § 1983 claim because of the existence of postdeprivation state remedies. To determine whether this argument is correct, we turn to *Zinermon [v Burch]*, 494 U.S. 113; 110 S.Ct. 975; 108 L.Ed.2d 100 (1990)]. . . .

The *Zinermon* Court then clarified that **the existence of a postdeprivation remedy is only relevant when the state is unable to provide predeprivation process because of the random and unpredictable nature of the deprivation.** [n9 The Court referenced *Parratt v Taylor*, 451 U.S. 527; 101 S. Ct. 1908; 68 L. Ed. 2d 420 (1981) (postdeprivation remedy is all the process that was due where a guard negligently lost a prisoner's \$ 23 hobby kit), and *Hudson v Palmer*, 468 U.S. 517; 104 S. Ct. 3194; 82 L. Ed. 2d 393 (1984) (postdeprivation remedy is all the process that was due where a guard deliberately destroyed some of a prisoner's property), as examples of cases where the state was unable to provide predeprivation process because of the random and unpredictable nature of the deprivation.] The Court concluded:

**In situations where the State feasibly can provide a predeprivation hearing before taking property, it generally must do so regardless of the adequacy of a postdeprivation tort remedy to compensate for the taking.** [494 U.S. at 132.][n10 See also *Gilbert v Homar*, 520 U.S. 924, 930; 117 S. Ct. 1807; 138 L. Ed. 2d 120 (1997).] (Emphasis added)

The existence of a postdeprivation remedy in MCL 211.78l does not excuse failure to meet minimum due process requirements. The government’s deprivation of property rights must be done pursuant to a constitutionally adequate due process procedure, regardless of whether a postdeprivation remedy exists, because the nature of the governmental taking is planned and not a random and unauthorized action of some government employee. *Mudge, supra* at 100, citing

*Augustine v. Doe*, 740 F.2d 322, 329 (CA 5, 1984). The existence of a postdeprivation remedy only excuses failure to provide due process where the action of the government employee *unpredictably* deprives a person of their property outside of an established due process procedure. This is only common sense. To argue, as do Appellants, that the government's *negligent* failure to follow established due process procedures can completely excuse their obligation to follow these procedures is illogical. This line of reasoning would completely negate the constitutional right to due process, since any failure to follow the established procedures for providing due process could always be blamed upon some bureaucratic error. The government would no longer be accountable for providing due process whenever it took someone's property. The cost of the government's error would no longer be borne by the government, but rather would be shifted to the innocent taxpayer whose property was being seized.

Appellants' line of reasoning was rejected in *Mudge*, which held that established procedures designed to safeguard procedural due process must be followed, as long as these procedures **could** have been followed:

Plaintiffs have properly alleged that they could have been provided, and therefore should have been provided, with notice and an opportunity to be heard before their [property was] seized, or at least been provided with an opportunity to contest the matter at a show cause hearing. As the Sixth Circuit has explained:

The touchstone of procedural due process is the fundamental requirement that an individual be given the opportunity to be heard "in a meaningful manner." [Citations omitted.] Many procedural due process claims are grounded on violations of state-created rights, as is the case here; rights that do not enjoy constitutional standing. However, the right to a hearing prior to the deprivation is of a constitutional stature and so does not depend upon the nature of the right violated. [*Howard v Grinage*, 82 F.3d 1343, 1349 (CA 6, 1996).] *Mudge*, *supra* at 101.

Moreover, as noted by Justice Blackmun in his concurring opinion in *Daniels*, 427 U.S. at 340, the existence of a postdeprivation compensation mechanism by the state is only relevant when used in conjunction with one of the very limited situations where governmental negligence makes predeprivation hearings impractical. As discussed above, this is not one of those situations. Because predeprivation hearings are not only possible, but at the very heart of this case, the entire question of governmental negligence is irrelevant.

3. Appellants' third argument is that the taking of property under the General Property Tax Act is analogous to "just compensation" takings under public condemnation laws. This argument completely misses the issue in this case. The issue is the taking of private property without due process. Whenever private property is taken through public condemnation, due process is accorded the property owner. See Uniform Condemnation Procedures Act, 1980 PA 87, MCL 213.51 et seq., which as the title indicates is entirely devoted to the due process procedures involved in government taking of property through condemnation. Further rebuttal of Appellants' argument is impractical, since it does not apply to the issue before the Court and is based upon a false premise.

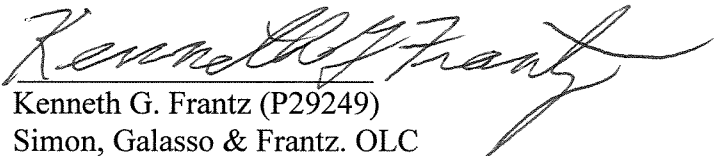
The amicus curiae briefs in support of Appellants make similar arguments based upon the Condemnation Procedures Act or the Escheat Act. These arguments all make the same errors as Appellants, and presume that because property may be taken by the government pursuant to the procedures set forth in those other acts, it means that property can be taken without due process under the General Property Tax Act. These arguments do not address the issue before this Court for the reasons noted above.

## CONCLUSION AND RELIEF REQUESTED

For the reasons set forth in this amicus curiae brief, High Praise Cathedral of Faith Ministries respectfully joins in the request of Respondent-Appellee Perfecting Church that:

1. The Court affirm and uphold the decision of the circuit court setting aside the foreclosure and sale of Perfecting Church's Property under the General Property Tax Act, and
2. The Court hold that circuit courts retain jurisdiction pursuant to MCR 2.612 to grant relief from their own prior judgments of foreclosure, and
3. The Court hold that Appellants' interpretation of MCL 211.78~~l~~ would unconstitutionally permit a person to be deprived of property without being afforded due process, and therefore the proper interpretation of MCL 211.78~~l~~ should be that it should **not** be interpreted to restrict circuit court jurisdiction under MCR 2.612.

Respectfully submitted,  
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